International Criminal Court ICC-ASP/1/L.1

Assembly of States Parties

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Election of judges

Proposal submitted by France

1. Insert the following text in document PCNICC/2002/2, Annex XII, following paragraph 20:

For the purposes of the first election of the judges of the International Criminal Court the election procedure will be as follows:

1. The persons elected to the Court shall be the 18 candidates who obtain the highest number of votes and a two-thirds majority of the States Parties present and voting. However, no more than 13 candidates from list A and no more than 9 candidates from list B shall be considered elected. **In the event that fewer than 9 candidates from list A or fewer than 5 candidates from list B are among these 18 candidates, only the 13 candidates from list A or the 9 candidates from list B having obtained the highest number of votes shall be considered elected. The remaining seats shall be assigned to the candidates from the other list having obtained the requisite majority.**

2. States Parties shall, in the election of judges, take into account the need for the representation of the principal legal systems of the world. They shall also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women and children.

3. **In the first ballot, each State Party shall cast 18 votes which shall be distributed between the list of female candidates and the list of male candidates. The proportion of votes allocated to each list shall depend on the number of names on the list in relation to the total number of candidates. However**, each State Party shall vote for at least six candidates from each gender. If the number of candidates from one gender is less than eight, the minimum voting requirement for that gender shall be equal to two less than the number of candidates **on that list**.

If there are still seats to be filled, a second ballot shall be held according to the modalities specified in paragraph 4. If among those elected, 13 are

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on list A or 9 are on list B, the next ballot or ballots shall concern only the candidates on the list for which the minimum quota has not been attained.

4. If, after the first ballot, fewer than 18 candidates are elected, the maximum number of votes by a State Party shall be reduced, for each subsequent ballot, by subtracting the number of elected candidates.

5. **For the purposes of the second ballot, each regional group shall be allocated a minimum voting quota as follows:**

African group: 3

Asian group: 2

Eastern European group: 2

Latin American and Caribbean group: 3

Western European and Others group: 3

minus the number of candidates from each regional group elected in the first ballot. If the number of candidates from one regional group is not at least one more **than the respective minimum quota, reduced, if necessary, as provided for in the preceding paragraph,** the voting quota shall then be the number of candidates from that region minus one.

If the number of seats remaining to be filled does not permit the application of the quotas, thus defined, then all the minimum quotas shall be reduced.

6. **Starting with the third ballot, a minimum voting quota shall be set for each of the lists as follows:**

list A: 9

list B: 5

minus the number of candidates from each list already elected in the preceding ballots. If for either list the adjusted quota is less than or equal to 0, the minimum voting quota shall cease to apply to that list. This quota shall be adjusted following each ballot according to the number of candidates elected.

As many ballots shall be held as are needed to fill the 18 seats.

Once 13 candidates, at most, from list A or 9 candidates, at most, from list B are elected and if there are still vacancies to be filled, subsequent ballots shall concern only the candidates from the list for which the minimum quota has not been attained.

7. Only ballot papers observing the aforementioned requirements shall be counted. **Any ballot paper that does not observe the voting requirements set out in the preceding paragraphs shall be invalid.**

8. Ballot papers shall be organized in a manner facilitating such an election process and voting requirements and any adjustments must be clearly indicated. Clear instructions and sufficient time shall be given for each ballot.

9. The President of the Assembly of States Parties shall be responsible for the election procedure, including the determination or adjustment of the requirements set forth above.

2. The first paragraph of paragraph 3 should be read with the following understanding:

"The numbers appearing in the first paragraph of paragraph 3 are only for the purpose of the first election of the judges of the International Criminal Court, without prejudice whatsoever to subsequent elections. These proportions shall be reconsidered with regard to the composition of the Assembly of States Parties before each election."

Annex

1. This proposal is based on the proposal submitted as a working paper for the Assembly of States Parties by a group of delegations on 11 July (PCNICC/2002/WGASP-PD/DP.8).

2. The principal difference between it and the initial document is that it takes into account the criteria of article 36, one after the other. The purpose of this change is to achieve a procedure that is less drawn-out because it is simpler for States Parties, since they will have to take into account only one criterion in each ballot. Logically, this should result in fewer invalid ballot papers and fewer objections from States Parties.

3. Moreover, this proposal seeks to ensure a more balanced representation of the genders, by introducing a minimum voting requirement that is proportional to the number of candidates. Just as a revision of the minimum voting requirements for regional groups is provided for, according to changes in the composition of the Assembly of States Parties, so it seemed equitable to provide for a comparable, although adjusted, mechanism for the criterion of representation between men and women.

4. This system takes better into account the criteria of paragraph 8 of article 36 of the Statute, while at the same time giving greater freedom of choice to States Parties. Indeed, in the initial system, the composition of the list of candidates might "dictate" the choice of States Parties, which would then have led to the automatic election of certain candidates. For example, that might happen if there were few female candidates and they were all concentrated in only one or two regional groups.

5. This rigidity of voting and the risk of an automatic majority had prompted several delegations to request a "right of partial abstention" for States Parties. This mechanism, provided for in paragraph 7 of the working paper, aroused strong objections from other delegations which considered that it might have the effect undermining the "minimum voting requirements".

6. By avoiding, save in very exceptional cases, the emergence of an automatic majority due to the application of minimum voting requirements, the revised proposal would make it possible to do away with the "right of partial abstention".

7. Finally, the revised proposal makes a distinction between the results quotas fixed by article 36, paragraph 5 of the Statute and the criteria of article 36, paragraph 8. The results quotas (distribution between lists A and B) are taken into consideration in the first and second ballots at the time of counting: there is no need to impose voting requirements concerning the lists right away, starting with the first ballot, since they have no automatic effect on the final result. However, in order to guarantee that the final result will be consistent with the Statute, voting requirements concerning these lists are imposed starting with the third ballot, if it seems that the minimum quotas set by the Statute have not yet been attained.

Description of the mechanism

1. First ballot. Equitable representation between men and women

8. States shall vote for 18 candidates, distributed between the list of male candidates and the list of female candidates. The proportion of votes assigned to each list is based on the number of names on the list in relation to the total number of candidates. However, a minimum number of votes per gender is provided for (six), unless the number of candidates for either gender is less than eight, in which case the number of votes for the list in question is equal to the number of candidates minus two.

- *Thus if the number of female candidates is equal to the number of male candidates, each State will have to vote for nine names on each list. If there are five female candidates and 40 male candidates each State party will have to vote for three women and 15 men.*

9. Candidates having obtained a two-thirds majority of the number of States present and voting shall be elected.

10. If more than 18 candidates obtain the required majority, the 18 who obtain the greatest number of votes shall be elected. However, the number of candidates elected cannot exceed 13 from list A and 9 for list B, by applying the provisions of paragraph 5 of article 36 of the Statute.

- *A candidate who obtains the required majority but who is 14th on list A cannot be elected. In that case, it would be necessary to take an additional candidate from list B (if the number of candidates from list B having obtained the required majority so permits). If not, another ballot shall be held only on the candidates on list B.*

11. If there are still vacancies to be filled, a second ballot will be organized according to the modalities stated in section 2 below. If, among those elected, 13 are on list A or 9 are on list B, any subsequent ballots shall be held only on the candidates of the list for which the minimum quota has not been attained.

2. Second ballot: equitable distribution among regional groups

12. Each regional group shall be allocated a minimum quota of votes as follows:

African group: 3

Asian group: 2

Eastern European group: 2

Latin American and Caribbean group: 3

Western European and Others group: 3

13. This number shall be reduced by the number of candidates from each regional group elected in the first ballot. It shall also be reduced by one if the number of candidates in any regional group is not greater than the minimum number of votes for that regional group after deduction of the candidates elected in the first ballot. If the adjusted quota is less than or equal to 0 for any regional group, the minimum quota of votes shall not apply for that group.

- *If a regional group has a minimum voting quota of three and two candidates are elected in the first ballot, its voting quota will be one in the second ballot, provided that there is at least one candidate remaining to be elected for that group.*

14. If the number of vacancies to be filled does not allow for the application of the quotas so defined, all minimum quotas shall therefore be reduced.

- *If only two candidates remain to be elected in the second ballot and the application of minimum voting quotas would require voting for one candidate from the Western European and other group, one from the African group and one from the Latin American and Caribbean group, States parties will have to vote only for candidates from those three regional groups without any regional voting quota. For instance, one State could vote for two candidates from the Latin American and Caribbean group, or for one candidate from the Western European and others group and one from the African group. However, it could not vote for a candidate from the Eastern European group or for one from the Asian group.*

15. Each State must cast a number of votes equal to the number of seats that have yet to be filled. If, following the second ballot, the number of candidates having obtained the requisite majority is greater than the number of seats to be filled, those candidates having obtained the highest number of votes in the second ballot shall be elected, until all the seats are filled. However, the number of persons elected cannot exceed 13 from list A and 9 from list B, in application of the provisions of paragraph 5 of article 36 of the Statute.

- *Example: If there remain 10 seats to be filled and, 12 candidates obtain the requisite majority in the second ballot, only 10 will be elected, in principle, in the order of the number of votes received, until the maximum quota is attained for one of the lists (13 for list A and 9 for list B). If there are still any vacancies remaining, they will be filled by candidates from the other list.*

16. If there are still seats to be filled, following the second ballot, subsequent votes will be held in accordance with the provisions of section 3 below. If, among those elected, 13 are from list A or 9 from list B, the subsequent ballots will concern only candidates from the list for which the minimum quota has not been attained.

3. Observing the quotas for lists A and B

17. Starting with the third ballot, a minimum voting quota shall be set for each list as follows:

List A: 9

List B: 5

minus the number of candidates from each list already elected in the previous ballots. If for either list the adjusted quota is less than or equal to 0, the minimum voting quota ceases to apply for that list. This quota is adjusted following each ballot, according to the number of candidates elected.

18. There shall be as many ballots as is needed in order to fill the 18 seats. At each ballot, States shall have as many votes as the number of seats that remain to be filled.

19. Once 13 candidates, at most, from list A or 9 candidates, at most, from list B are elected, and if there are still vacancies to be filled, subsequent ballots shall concern only the candidates on the list for which the minimum quota has not been attained.

4. **Any ballot paper that does not observe the minimum voting quotas set forth in the preceding sections shall be invalid.**